



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2010-1055; FRL -9906-65-Region 6]

**Approval and Promulgation of Air Quality Implementation Plans; New Mexico;
Transportation Conformity and General Conformity Requirements for Bernalillo County**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action approving State Implementation Plan (SIP) revisions submitted by the Governor of New Mexico on November 18, 2010, May 24, 2011 and October 11, 2012 on behalf of the Albuquerque-Bernalillo County Air Quality Control Board (AQCB). These revisions serve to incorporate recent changes to the Federal Transportation Conformity and General Conformity rules into the state conformity SIP for Bernalillo County. EPA is approving these revisions in accordance with the requirements of the Federal Clean Air Act (CAA).

DATES: This rule is effective on **[Insert date 60 days from date of publication in the Federal Register]** without further notice, unless EPA receives relevant adverse comment by **[Insert date 30 days from date of publication in the Federal Register]**. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket No. EPA-R06-OAR-2010-1055, by one of the following methods:

- *www.regulations.gov*. Follow the on-line instructions.
- E-mail: Michelle Peace at *peace.michelle@epa.gov*.
- Mail or delivery: Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.

Instructions: Direct your comments to Docket ID No. EPA-R06-OAR-2010-1055. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through *http://www.regulations.gov* or e-mail, if you believe that it is CBI or otherwise protected from disclosure. The *http://www.regulations.gov* website is an “anonymous access” system, which means that EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment along with any disk or CD-ROM submitted. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters and any form of encryption and should be free of

any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: The index to the docket for this action is available electronically at www.regulations.gov and in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment with the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214-665-7253.

The State submittal is also available for public inspection at the State Air Agency listed below during official business hours by appointment:

City of Albuquerque Environmental Health Department, Air Quality Division, Office of Air Quality, One Civic Plaza Northwest, Albuquerque, New Mexico 87103.

FOR FURTHER INFORMATION CONTACT: Michelle Peace, telephone (214) 665-7430, e-mail peace.michelle@epa.gov. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, fax number 214-665-7263.

SUPPLEMENTARY INFORMATION

Throughout this document, whenever "we" "us" or "our" is used, we mean the EPA.

Outline

I. What Is Transportation Conformity?

- II. What Is General Conformity?
- III. What Is the Background for This Action?
- IV. What Did the State Submit and How Did We Evaluate It?
- V. Final Action
- VI. Statutory and Executive Order Reviews

I. What Is Transportation Conformity?

Transportation conformity is required under section 176(c) of the Clean Air Act to ensure that Federally supported highway and transit projects are consistent with (conform to) the purpose of the approved SIP. Conformity currently applies to areas that are designated nonattainment, and those areas redesignated to attainment after 1990 (maintenance areas), with plans developed under section 175A of the Clean Air Act for the following transportation related criteria pollutants: Ozone, particulate matter (PM_{2.5} and PM₁₀), carbon monoxide (CO), and nitrogen dioxide (NO₂). Conformity with the purpose of the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the relevant National Ambient Air Quality Standards (NAAQS). The Federal transportation conformity regulations are found in 40 CFR part 93 and provisions related to conformity SIPs are found in 40 CFR 51.390.

II. What Is General Conformity?

General conformity is also required under section 176(c) of the Clean Air Act to ensure that all other Federally supported actions outside of highway and transit projects are consistent with the purpose of the approved SIP. General conformity requirements currently apply to the

following criteria pollutants: Ozone, particulate matter (PM_{2.5} and PM₁₀), carbon monoxide (CO), and nitrogen dioxide (NO₂), sulfur dioxide (SO₂) and Lead. The Federal general conformity regulations are found in 40 CFR part 93 and provisions related to general conformity SIPs are found in 40 CFR 51.851.

III. What is the Background for This Action?

States adopt transportation conformity SIPs to enable an area to implement and enforce the Federal transportation conformity requirements per 40 CFR 51 subpart T and 40 CFR 93 subpart A. The AQCB initially complied with this requirement by submitting a SIP to EPA on December 19, 1994; we approved this SIP on November 8, 1995 (60 FR 56241). Since the November 8, 1995 approval, the Governor of New Mexico has submitted a number of revisions to the conformity SIP. The most recent of these revisions were submitted on November 18, 2010, and October 11, 2012. The November 18, 2010 submittal consists of amendments to 20.11.3 NMAC, Transportation Conformity reflecting federally promulgated changes that affect PM_{2.5} and PM₁₀ nonattainment and maintenance areas (75 FR 14260). The October 11, 2012 Transportation Conformity submittal includes the current transportation conformity rule that reflects all transportation conformity rulemakings promulgated by EPA as of April 2012, including the Restructuring Amendments final rulemaking (77 FR 14979).

States adopt general conformity SIPs to enable an area to implement and enforce the Federal general conformity requirements per 40 CFR 51 subpart W and 40 CFR 93 subpart B. The AQCB initially complied with this requirement by submitting a SIP to EPA on October 1, 2002 and approved by EPA on December 30, 2004 (69 FR 78314). EPA promulgated amendments to the Federal general conformity rule on April 5, 2010 (75 FR 17254). AQCB's

May 24, 2011 revision serves to update Albuquerque's regulations found in 20.11.4 NMAC, General Conformity and bring them in line with these most recent changes to the Federal general conformity rule. Because 40 CFR part 51, subpart W (§§51.850-51.860) essentially duplicates the regulations promulgated at 40 CFR part 93, subpart B (§§93.150-93.160), EPA has deleted all of subpart W except for §51.851. In the revision to §51.851, EPA requires that if a state or tribe submits a General Conformity SIP or TIP that it be consistent with the requirements of 40 CFR part 93, subpart B. The EPA added paragraph (f) to 40 CFR 51.851 to allow the states and tribes to develop their own "presumed to conform" list for actions covered by their conformity SIPs or TIPs." AQCB has not used this provision to develop a "presumed to conform" list for its conformity SIP.

IV. What Did the State Submit and How Did We Evaluate It?

On November 18, 2010 and October 11, 2012, the Governor of New Mexico submitted a revision to the Bernalillo County, New Mexico State Implementation Plan (SIP) for Transportation Conformity purposes. The November 18, 2010 SIP revision consists of language to address the April 23, 2010 federal changes to address PM_{2.5} and PM₁₀ nonattainment areas. The October 11, 2012 submittal addresses EPA's March 14, 2012 revisions to the Federal rule by restructuring two sections of the conformity rule, 20.11.3.109 NMAC (40 CFR 93.109) and 20.11.3.119 NMAC (40 CFR 93.119), so that the existing rule requirements clearly apply to areas designated for future new or revised NAAQS.

On May 24, 2011, The Governor of New Mexico submitted a revision to the Bernalillo County SIP for General Conformity purposes. The SIP revision consists of language to address

the April 5, 2010 federal changes to update and streamline the general conformity determination process.

The practice of the AQCB is to incorporate federal language into its local rules and customize such rules to meet the standard required by the New Mexico Administrative Code (NMAC) style guidance, rather than to incorporate by reference the federal rules. This approach is consistent with 40 CFR 51 subparts T and W, which allow a state's conformity SIPs to contain criteria and procedures more stringent than the federal requirements. EPA reviewed the sections of the NMAC found in Tables 1 and 2 for consistency with the Federal Regulations. We found that the revised NMAC sections accurately reflect the current content of corresponding sections of the Federal transportation and general conformity rules they are intended to address, as well as adds specific language to further clarify roles and responsibilities in the Bernalillo County consultation process. Table 1 highlights the sections of NMAC Chapter 20 that were revised to address EPA's March 24, 2010 federal transportation conformity rulemaking (75 FR 14260). Table 2 highlights the sections of NMAC Chapter 20 that were revised to address EPA's March 14, 2012 federal transportation conformity rulemaking (77 FR 14979). Table 3 highlights the sections of NMAC Chapter 20 that correspond to the revisions to the federal general conformity rules which became effective on July 6, 2010. These NMAC revisions are reflected in the AQCB's May 24, 2011 submittal.

Table 1: November 18, 2010 Revisions to NMAC Chapter 20, *Transportation Conformity*, and Corresponding Sections of 40 CFR Part 93

| NMAC Ch. 20 | 40 CFR 93 |
|--------------------|------------------|
| 20.11.3.2 | 93.102 |
| 20.11.3.7 | 93.101 |
| 20.11.3.103 | 93.103 |
| 20.11.3.104 | 93.104 |
| 20.11.3.105 | 93.105 |

| | |
|--------------|--------|
| 20.11.3.106 | 93.106 |
| 20.11.3.107 | 93.107 |
| 20.11.3.108 | 93.108 |
| 20.11.3.109 | 93.109 |
| 20.11.3.110 | 93.110 |
| 20.11.3.111 | 93.111 |
| 20.11.3.112 | 93.112 |
| 20.11.3.113 | 93.113 |
| 20.11.3.114 | 93.114 |
| 20.11.3.115 | 93.115 |
| 20.11.3.116 | 93.116 |
| 20.11.3.117 | 93.117 |
| 20.11.3.118 | 93.118 |
| 20.11.3.119 | 93.119 |
| 20.11.3.120 | 93.120 |
| 20.11.3.121 | 93.121 |
| 20.11.3.122 | 93.122 |
| 20.11.3.123 | 93.123 |
| 20.11.3.124 | 93.124 |
| 20.11.3.125 | 93.125 |
| 20.11.3.126 | 93.126 |
| 20.11.3..127 | 93.127 |
| 20.11.3.128 | 93.128 |
| 20.11.3.129 | 93.129 |

Table 2: October 11, 2012 Revisions to NMAC Chapter 20, *Transportation Conformity*, and Corresponding Sections of 40 CFR Part 93

| NMAC Ch. 20 | 40 CFR 93 |
|--------------------|------------------|
| 20.11.3.7 | 93.101 |
| 20.11.3.109 | 93.109 |
| 20.11.3.118 | 93.118 |
| 20.11.3.119 | 93.119 |

Table 3: May 24, 2011 Revisions to NMAC Chapter 20, *General Conformity*, and Corresponding Sections of 40 CFR Part 93

| 20 | NMAC Ch. | 40 CFR 93 |
|-----------|-----------------|------------------|
| | 20.11.4.2 | 93.150 |
| | 20.11.4.6 | 93.100 |
| | 20.11.4.7 | 93.152 |
| | 20.11.4.9 | 93.104 |
| | 20.11.4.10 | 93.105 |
| | 20.11.4.11 | 93.106 |
| | 20.11.4.153 | 93.153 |
| | 20.11.4.154 | 93.154 |
| | 20.11.4.155 | 93.155 |
| | 20.11.4.156 | 93.156 |

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|-------------|--------|
| 20.11.4.157 | 93.157 |
| 20.11.4.158 | 93.158 |
| 20.11.4.159 | 93.159 |
| 20.11.4.160 | 93.160 |
| 20.11.4.161 | 93.161 |
| 20.11.4.162 | 93.162 |
| 20.11.4.163 | 93.163 |
| 20.11.4.164 | 93.164 |
| 20.11.4.165 | 93.165 |

The complete federal conformity rules of 40 CFR 93 and the complete NMAC Chapter can be found at the following websites: <http://www.gpoaccess.gov/cfr/index.html> for the federal rules and <http://www.nmcpr.state.nm.us/nmac/index.htm> for the local rules.

V. Final Action

EPA is approving the Bernalillo County SIP revisions for Transportation Conformity, which were submitted on November 18, 2010 and October 11, 2012. AQCB's revisions amend rule 20.11.3 NMAC *Transportation Conformity* by updating it to bring it into compliance with the amended Federal transportation conformity rule. EPA is also approving AQCB's revision to the Albuquerque SIP submitted to EPA on May 24, 2011. AQCB's revision amends rule 20.11.4 NMAC *General Conformity* to update the general conformity rule in its entirety to meet state and federal requirements. We have evaluated the State's submittals and have determined that they meet the applicable requirements of the Clean Air Act and EPA regulations, and are consistent with EPA policy.

EPA is publishing this rule without prior proposal because we view this as a non-controversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if relevant adverse comments are received.

This rule will be effective on **insert date 60 days from date of publication in the Federal**

Register] without further notice unless we receive adverse comment by **[insert date 30 days from date of publication in the Federal Register]**. If we receive adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

VI. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days from date of publication of this document in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: January 28, 2014.

Ron Curry,
Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart GG—New Mexico

2. In § 52.1620, the second table in paragraph (c) entitled, “EPA Approved

Albuquerque/Bernalillo County, NM Regulations,” is amended by revising the entries for Part 3 (20.11.3 NMAC), Transportation Conformity, and Part 4 (20.11.4 NMAC), General Conformity to read as follows:

§ 52.1620 Identification of plan.

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(c) * * *

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EPA APPROVED ALBUQUERQUE/BERNALILLO COUNTY, NM REGULATIONS

| State citation | Title/subject | State approval/ effective date | EPA approval date | Explanation |
|---|------------------------------|-----------------------------------|---|-------------|
| New Mexico Administrative Code (NMAC) Title 20--Environment Protection Chapter 11 -- Albuquerque/Bernalillo County Air Quality Control Board | | | | |
| * * * * * | | | | |
| Part 3 (20.11.3 NMAC) | Transportation Conformity | 11/18/2010; 10/11/2012 | [Insert date of FR publication] [Insert FR page number where document begins] | |
| Part 4 (20.11.4 NMAC) | General Conformity | 5/24/2011 | [Insert date of FR publication] [Insert FR page number where document begins] | |
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